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1981

DECISION



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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-204027.2

DATE: August 20, 1981

MATTER OF: Service Engineering Co.

DIGEST:

GAO will not consider merits of protest that contracting officer's nonresponsibility determination of small business bidder is deficient and illegal because law requires referral of these matters to Small Business Administration for final disposition.

Service Engineering Co. (SECO) protests the Navy's nonresponsibility determination regarding certain top-side overhaul and repair work solicited under invitation for bids No. N62798-81-B-0099.

SECO contends that the Navy contracting officer's nonresponsibility determination is deficient on its face and in violation of applicable law and regulations concerning responsibility determinations. SECO states that although our Office will not ordinarily entertain protests involving matters of responsibility, we should consider this matter on the ground that the Navy's determination is illegal. SECO, a small business, has requested the Small Business Administration (SBA) to issue a certificate of competency; at present, the SBA has not reached a final decision.

When an agency determines that a small business bidder is nonresponsible, as here, the law requires that the matter be referred to the SBA, which conclusively determines the bidder's responsibility by issuing or declining to issue a certificate of competency. 15 U.S.C. § 637(b)(7) (1976 and Supp. I, 1977); Dan's Janitorial Service & Supply, B-200360, January 22, 1981, 81-1 CPD 36. Before reaching its final decision, SBA permits a bidder determined to be nonresponsible to submit evidence demonstrating its

[Protest of Nonresponsibility Determination]

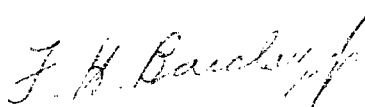
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responsibility. 13 C.F.R. § 125.5 (1981). Thus, SECO should present its legal arguments to SBA. After SBA's consideration of the matter, it issues or declines to issue a certificate of competency. Absent a prima facie showing of fraud or bad faith, our Office has no authority to review SBA's determination, to require issuance of a certificate of competency, or to reopen a case when a certificate of competency has been denied. Ken Com, Inc., 59 Comp. Gen. 417 (1980), 80-1 CPD 294.

Accordingly, in the circumstances, the law provides for SBA's consideration of SECO's responsibility under the certificate of competency program. Thus, we will not consider the matter under our bid protest function. When SBA's review is completed, it will be final and conclusive, unless SECO can present a prima facie showing that SBA's determination was tainted by fraud or bad faith. B&W Construction Corporation, B-199877, September 30, 1980, 80-2 CPD 233.

SECO's protest is dismissed.



For Harry R. Van Cleve
Acting General Counsel